

WARRICK COUNTY COMMISSIONERS ORDINANCE NO. 2020 - 13

AN ORDINANCE TO AMEND ARTICLE V "SPECIAL USES" BY ADDING SUBSECTION M SU-29 COMMERCIAL SOLAR ENERGY SYSTEM REQUIREMENTS OF THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR
WARRICK COUNTY, INDIANA

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WARRICK COUNTY, INDIANA, as follows to wit:

Section 1. That Article V "Special Uses" Section 5 Procedures be amended by adding Subsection M as follows:

M. All SU-29 Special Uses shall be subject to the following requirements.

WHEREAS, this subchapter provides for the permitting, regulation, and operation only of ground-mounted Commercial Solar Energy Systems ("CSES") constructed for the principle purpose of selling electric power commercially by means of converting solar energy from the Sun into the generation of electricity by means of photovoltaic. A photovoltaic (PV) cell, also known as a solar cell, is an electronic component that generates electricity when exposed to photons, or particles of light.

WHEREAS, Warrick County finds that it is in the public interest to encourage the use and development of renewable commercial energy systems, such as photovoltaic cells, that enhance energy generation efforts without negatively impacting the environment. As such, it is the public policy of this County to encourage the use of commercial solar energy collection systems for the generation of commercial energy without unduly limiting the locations of such systems.

WHEREAS, it is the public policy of this County to prefer not to use our County's "Prime Farmland" for such purposes, which type of land is a designation assigned by U.S. Department of Agriculture defining land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops.

WHEREAS, these regulations are predicated upon the unique needs of CSES within Warrick County so as to encourage the efficient use of this energy source in a manner consistent with the property rights of all. All CSES should be sited and constructed in a location and manner that is best suited for this purpose and is harmonious and beneficial to the districts where permitted.

WHEREAS, the purpose of this Ordinance is to facilitate the construction, installation, and operation of CSES in Warrick County in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands, conservation lands, and other environmentally sensitive areas of our County.

WHEREAS, this Ordinance is not intended to abridge safety, health, or environmental requirements contained in other applicable statutes, codes, standards, regulations, or ordinances.

NOW THEREFORE, be it adopted as the ordinance of Warrick County, Indiana:

Commercial Solar Energy Systems ("CSES") Applicability

All new development or physical additions to existing CSES installations within the unincorporated areas of Warrick County shall be sited, constructed, installed, operated, maintained, and decommissioned in compliance with the provision of this subchapter, after the date of its enactment.

(A) A ground-mounted CSES is a solar energy system that is structurally mounted to foundations installed in the soil that solely support the CSES structures, which shall in total contain 32,000 or more square feet in photovoltaic panel area.

(B) A special use permit is required for all CSES uses after the date of adoption of this Ordinance. An Improvement Location Permit is required for all CSES uses. All CSES applicants shall pay the applicable fees and charges prescribed from time to time by the Warrick County Area Plan Commission and/or the Warrick County Board of Zoning Appeals. A building permit is required for the installation of all CSES uses. Each CSES shall comply with all federal, state, and local laws, statutes, regulations, and ordinances, including but not limited to building codes, fire codes, limitation upon placement in floodplains and historic preservation districts, and federal aviation regulations. No non-required signage shall be permitted to be installed or maintained upon the CSES sites.

(C) All CSES sites shall be located in such a manner as to ensure emergency 24/7 access in compliance with the Indiana Fire Code as locally enforced. A fire protection plan for the construction and operation of the CSES site describing the means of emergency access (i.e. a knox box with keys) shall be developed in coordination with the responsible emergency response department and provided at the site review meeting

(D) The CSES site may occupy the entire property area, less customary set-backs applicable in the zoning district, but not less than twenty-five (25) feet or more than one hundred (100) feet to be applicable around the outside boundary perimeter of the CSES property with non-participating property owners but not to be applicable between participating parcels contained within the CSES property, and provide all necessary ingress and egress and emergency access areas. The CSES shall be landscaped with pollinator-friendly seed mixes and native plants as described in a landscaping plan designed by an Indiana Registered Landscape Architect. If the CSES is located within one thousand (1,000) feet of a residential subdivision, a major commercial development, or a heavily traveled public highway, the CSES site shall be designed to maximize the use of appropriate vegetative buffers to minimize its visual footprint using vegetation variety recommendations provided by an appropriate Extension Service. All such vegetative buffers and landscaping must be displayed upon the site plan so as to be appropriately considered as part of the Special Use application

(E) If practical, power transmission lines from the CSES, not including lines that connect one panel to another, to the main power transmission lines should be underground and must be shielded against shock hazard.

(F) All driveways serving any CSES shall be of a durable surface that meets the minimum specifications prescribed by the Warrick County Highway Engineer for a commercial driveway within the public right-of-way. Interior site drives may be required to be paved as so determined by the Warrick County Board of Zoning Appeals. Parking areas applicable to the CSES are exempt from the off-street parking regulations within the zoning district, but must meet the required set-back and landscaping limitations.

(G) Any CSES that has reached the end of its useful life or has been abandoned shall be removed by the owner. Such physical removal shall be completed no more than 365 days after the date of discontinued operations, or by such timeframe as may be determined by the Warrick County Board of Commissioners. To be in compliance with this requirement, decommissioning shall consist of the physical removal of all CSES structures and equipment from the site; disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and stabilization or re-vegetation of the site as necessary to minimize erosion. The Warrick County Board of Commissioners may approve reasonable requests from the owner to leave landscaping or designated below-grade foundation in place in order to minimize erosion and disruption to existing vegetation. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, a CSES shall be considered "abandoned" when it fails to operate for more than one year without the prior consent of the Warrick County Board of Commissioners. If the owner of any CSES fails to remove the installation in accordance with the requirements within 365 days of abandonment or the proposed date of decommissioning, Warrick County shall have the right, with or without a court order, to enter and remove an abandoned, hazardous, or decommissioned CSES. As a condition for the issuance of an Improvement Location Permit, the applicant and landowner shall agree in writing to allow Warrick County to enter and remove an abandoned, hazardous, or decommissioned installation. For cause, the CSES Owner may request an extension of time from the Warrick County Board of Commissioners in which to complete the decommissioning activities.

(H) The applicant, owner or developer on behalf of the owner of a CSES consisting of 32,000 or more square feet in photovoltaic panel area shall file with the Warrick County Area Plan Commission a legally binding instrument, such as an irrevocable letter of credit, or cashier's check from a duly chartered financial institution or insurance company providing surety satisfactory to Warrick County that all improvements and installations (required as a condition of the approved application and plat) will be constructed in accordance with the standards of this ordinance, and to secure the payment of the costs of removal of any abandoned CSES including the photovoltaic panels, and all associated equipment and buildings that have been determined to be abandoned, or found to be in non-compliance with this Ordinance. Such financial security shall be in the minimal amount of 125% of the cost estimate submitted by the applicant's registered professional engineer for the demolition and removal of the CSES, based upon: a) the estimated length of the useful life expectancy of the CSES; and, b) such cost estimated at the end of the useful life expectancy of the CSES. These required security fund conditions shall not apply to a municipal corporation or a school corporation, as defined in IC § 36-1-2-10 and 17 respectively. The Irrevocable Letter of Credit or cashier's check shall be filed prior to an Improvement Location Permit being issued. Any such funds release by the County Auditor shall be

made only upon receipt of an approval certificate signed by the Warrick County Commissioners. In the event an Irrevocable Letter of Credit is utilized, it shall auto renew for at least five (5) years at a time. In the event that the lending institution sends a notice of cancellation, a replacement Irrevocable Letter of Credit or cashier's check shall be timely submitted so as to not to permit any lapse in surety. The owner shall submit to the Warrick County Commissioners a reevaluation of the 125% cost estimate of demolition and removal of the CSES every five (5) years after the date of approval of the Special Use Application and the amount of the required Letter of Credit or cashier's check shall then be adjusted as the Commissioners so determine. Such irrevocable letter of credit shall comply with all statutory requirements and shall be satisfactory to the Attorney for the Board of County Commissioners as to form, sufficiency and manner of execution.

(I) The following additional terms and conditions shall be applicable to all CSES Special Use Applications:

1. The Special Use shall be null and void if construction of the CSES by the owner and/or applicant has not begun within two (2) years of its approval date, or any extension of the same granted by the Warrick County Board of Zoning Appeals.
2. If the real property to be used as the site of the proposed CSES is to be leased, legal consent between all parties, specifying the CSES use(s) of the land for the duration of the project, including easements and other agreements, shall be submitted with the application for the Special Use.
3. A Preliminary Site Plan shall be submitted to the Warrick County Site Review Committee showing the intended layout of the CSES prior to the submission of the application for the Special Use to the Warrick County Board of Zoning Appeals. Final Site Plan designs sealed by the Engineer of Record shall be submitted as part of the application for the Special Use. Such Preliminary and Final Site Plans shall display the location and spacing of the solar panels and their set-back distances, the location of public roads, ingress and egress points, and the location of underground or overhead electric lines connecting the site to any building, substation or other electric load.
4. Equipment specification sheets typical for a CSES shall be documented and submitted for all photovoltaic panels, significant components, mounting systems, and inverters that are anticipated to be installed.
5. The Special Use Application shall include a description of the continuing photovoltaic maintenance and property upkeep plans.
6. A decommissioning plan must be submitted as part of the Special Use Application. Compliance with this plan shall be made a condition of the approval of the special use permit. Such a plan must include an engineer's estimate of the cost of the decommissioning of the CSES and the estimated length of the operational life expectancy of the CSES.
7. A minimum of one (1) acre shall be required for each CSES. The surface area of the photovoltaic cells shall not be included in calculating the total lot coverage.

8. The CSES shall not exceed the maximum height restriction of the zoning district within which it is located.

9. All CSES shall be enclosed by fencing on all sides that shall not exceed eight (8) feet in height. "High Voltage" warning signs not larger than four (4) square feet displaying the owner's emergency contact information, facility name, 911 address, GPS coordinates, and such other requirements as may be contained in the National Electric Safety Code shall be affixed to the fencing entrance.

10. The applicant shall at all times maintain the fence and adhere to the approved vegetation plan. The failure to perform or maintain these requirements may result in the assessment of a maintenance fine not to exceed two hundred dollars (\$200.00) per day for up to each five (5) acres of the CSES site until the applicant is in compliance, as may be so determined by the Warrick County Board of Commissioners. Assessed maintenance fines are payable to the Warrick County Nuisance Fund, Fund No. 4210.

11. Reasonable accessibility to the CSEDs site to the satisfaction of local emergency management personnel for access by emergency services equipment and vehicles shall be required at all times.

12. No CSES shall be constructed in Warrick County until evidence has been submitted as part of the Improvement Location Permit Application that the owner/applicant has been approved for a power supply plan by a suitable third party.

13. A contour map showing the topography of the site shall be submitted to the Warrick County Site Review Committee and be included as part of the Special Use Application for consideration by the Warrick County Board of Zoning Appeals. Contour maps should be at ten (10) foot interval and include the following minimum information:

(a) Location by range, section, quarter section, township. City, town or civil township with legal boundary description or by other legal description.

(b) The name, address, and certification of the licensed surveyor preparing the plot plan and his or her signature and seal.

(c) Scale shown graphically and numerically, north point and date.

(d) Boundaries of the tract with accurate dimensions and bearings as determined by an accurate survey in the field that has been balanced and closed, as well as physically located by monumentation. Such plot plan must delineate any wetland areas and their boundaries. Furthermore, a copy of the current FEMA FIRM maps that show the subject property including the one hundred (100) year flood elevation and any regulated flood protection elevation shall be submitted to the Warrick County Site Review Committee and be included as part of the Special Use Application for consideration by the Warrick County Board of Zoning Appeals. Any proposed improvements within the floodplain area shall adhere to all requirements of the Warrick County Floodplain Ordinance.

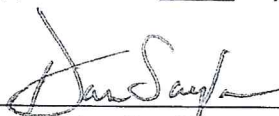
14. The CSES applicant must submit proposed preliminary drainage plans to the Warrick County Drainage Board for its determination of need and preliminary approval for site drainage improvements prior to consideration of the Special Use Application by the Warrick County Board of Zoning Appeals, including the identification of any legal drain, subsurface drainage tiles, water lines, pipes, sewers, etc. Any substantial deviation from these approved preliminary drainage plans will need to be reviewed and approved by the Warrick County Drainage Board prior to issuance of the Improvement Location Permit.
15. If lighting is installed at the CSES site, such lighting shall be shielded and downcast.
16. Only the outdoor storage of materials, vehicles, and equipment that directly support the daily operation and maintenance of that CSES shall be permitted to remain on the site.
17. The Special Use-29 applicant and/or operator of the CSES shall defend, indemnify, and hold harmless Warrick County and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including reasonable attorney's fees, without limitation, arising out of acts or omissions of the applicant, owner, and/or operator associated with or arising from the construction and/or operation of the CSES.
18. The owner and/or operator of the CSES shall maintain and provide a copy of a current general liability insurance policy covering bodily injury and property damage naming Warrick County Commissioners as an additional insured party. Said insurance policy shall have coverage limits of at least two million dollars (\$2,000,000.00) per occurrence and five million dollars (\$5,000,000.00) in aggregate with a deductible of not more than five thousand dollars (\$5,000.00). Any loss of coverage must be reported within ten (10) working days of occurrence. Failure to maintain coverage shall be considered an automatic cessation of operations.
19. The Warrick County Board of Commissioners, or its designee, shall have enforcement authority of this Ordinance and they shall be granted authority to enter upon the premises of the CSES at any reasonable time with or without the operator and/or owner to inspect the same. The Warrick County Board of Commissioners shall service notice by certified mail or such other verified means of deliver of written notification of any violations identified upon the CSES property and the Owner shall have thirty (30) days in which to remedy the violations identified. For cause, the CSES Owner may request an extension of time from the Warrick County Board of Commissioners in which to complete such remedies. Failure to permit such inspection or failure to remedy any discovered violation may be considered an automatic cessation of operations. Any funds received from an Irrevocable Letter of Credit or cashier's check shall be used by the Warrick County Commissioners only for the purpose of making the necessary improvements or the decommissioning of the site for which the letter of credit or cashier's check were provided. The proceeds of the Irrevocable Letter of Credit and of the cashier's check may be used for these purposes without appropriation. If the cost to cure discovered violation, install any necessary improvements, or the costs of decommissioning of the CSES exceeds the amount of the irrevocable letter of credit or cashier's check, an invoice for the difference shall be served upon the applicant, owner and/or operator ("responsible party") of the CSES. The responsible party shall, within ten (10) calendar days from the date of which he or she was served with such invoice, pay in full the

balance stated to the Warrick County Board of Commissioners. If the responsible party fails to timely pay any such invoice issued pursuant to this Ordinance, the Warrick County Board of Commissioners shall certify to the Warrick County Auditor the amount of the unpaid invoice, plus any additional administrative costs incurred in the certification of the same. The Warrick County Auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued interest, shall be due and payable with the parcel's real estate tax bill.

20. This Ordinance shall be a supplement to any state or federal laws or regulations, including but not limited to Indiana and United States Laws and Regulations for Renewable Energy and Grid Interconnections. If any section of this Ordinance is held to be unenforceable or invalid, then such finding of invalidity shall not affect the remaining provisions of this ordinance.

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Board of County Commissioners for Warrick County, State of Indiana.


Approved this 13 day of July, 2020.




Dan Saylor, President



Robert Johnson, Member




Terry Phillippe, Member
ATTEST:



Debra Stevens, Auditor

Public Hearing held by Plan Commission resulted in a favorable recommendation on June 8, 2020.



Jeff Valiant, President

ATTEST:


Molly Barnhill, Executive Director